

**HIGH COURT OF PUNJAB AND HARYANA****BENCH : HON'BLE MRS. JUSTICE ALKA SARIN****Date of Decision: 29th April 2024**

RSA-3009-2019 (O&amp;M)

**Hawa Singh & Ors. ....Appellants****VERSUS****Ravinder & Ors. ....Respondents****Legislation:**

No specific statutes cited, general principles of property law and evidence applicable.

**Subject:** This is a regular second appeal arising from the judgments and decrees of the Trial Court and First Appellate Court regarding the partition of property, wherein the lower courts passed a preliminary decree for partition which was contested by the appellants on the grounds of partial partition and mutual settlement claims.

**Headnotes:**

Property Law - Partition Suit - Regular Second Appeal against First Appellate Court decision upholding Trial Court's preliminary decree for partition of property measuring 3 kanals 16 marlas - Appellants challenged the decree claiming a prior mutual settlement excluding them from the suit property and contending that the suit was bad for partial partition - Trial Court found co-ownership and entitlement of shares among parties - First Appellate Court dismissed the defendants' appeal, finding no merit in the appeal on similar grounds. [Paras 1-7]

Evidence and Procedural Law - Rejection of unproved mutual settlement - Appellants' claim of mutual settlement based on writing Mark D1, argued to have excluded them from ownership, was not proved in accordance with the law - No evidence produced to substantiate claims of another property being

excluded from the partition - Arguments on partial partition not raised in lower courts or in written statements thus rejected by High Court. [Paras 6-7]

Decision - No substantial question of law - High Court finds no substantial question of law in the appeal as the appellants failed to substantiate their claims legally and factually - Appeal dismissed for lack of merit with all pending applications also disposed of. [Para 8]

Referred Cases: None.

Representing Advocates:

Mr. V.P. Sangwan, Advocate for the appellants.

ALKA SARIN, J.

CM-8154-C-2019

This is an application for condonation of delay of 14 days in refiling the appeal. For the reasons stated in the application, delay of 14 days in refiling the appeal is condoned. CM stands disposed off.

RSA-3009-2019

1. The present appeal has been preferred by defendant Nos.2 to 6 appellants herein challenging the judgment and decree dated 30.09.2015 passed by the Trial Court and the judgment and decree dated 01.10.2018 passed by the First Appellate Court.
2. Brief facts relevant to the present case are that the plaintiff-respondent Nos.1 to 8 herein filed a suit for partition of the suit property measuring 3 kanals 16 marlas as detailed in para 1 of the plaint. It was averred in the plaint that plaintiff-respondent Nos.1 to 4 had 39/210 share, plaintiff-respondent No.5 had 2/21 share, plaintiff-respondent Nos.6 to 8 and proforma defendant No.8 (respondent No.9 herein) had 2/21 share and rest of the land was that of the defendants. It was further averred that no partition had taken place, therefore, the suit for partition. On notice defendant Nos.1 to 7 (appellants and proforma respondent Nos.10 and 11) filed their written statement taking a stand that plaintiff-respondent Nos.1 to 8 had no concern with the suit land and that the predecessor-in-interest of the parties had reached a mutual settlement

whereby the predecessor-in-interest of the plaintiff-respondent Nos.1 to 8 were given another piece of land in lieu of the suit land and that since 1952 the land was in occupation of the defendants and they had constructed 19 rooms, 4 bathrooms, 2 tube-wells etc. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint.

3. On the basis of the pleadings, the following issues were framed by the Trial Court :
  1. Whether parties to the suit are co-owners in joint possession of suit land as alleged ? OPP
  2. Whether plaintiffs being co-sharers are having shares in the suit land if so to what extent ? OPP
  3. Whether if issues proved, then plaintiffs being cosharers are entitled to decree of partition qua their shares in the suit property by metes and bound with consequential relief of mandatory injunction as prayed for ? OPP
  4. Whether present suit is not maintainable in the present form ? OPD
  5. Whether plaintiffs have no locus standi to file the present suit ? OPD
  6. Whether plaintiffs have not come to the Court with clean hands and have concealed true and material facts from the Court ? OPD
  7. Whether defendants No. 1 to 7 are owners of entire suit land ? OPD
  8. Whether the Court has not no jurisdiction to try and entertain the present suit ? OPD
  9. Relief.
4. The Trial Court vide judgment and decree dated 30.09.2015 passed a preliminary decree. Aggrieved by the same, an appeal was preferred by the defendants which appeal was dismissed vide judgment and decree dated 01.10.2018. Hence, the present regular second appeal by defendant Nos.2 to 6-appellants. Defendant Nos.1 and 7 - Shamsheer and Ravinder - have chosen not to file the appeal.
5. Learned counsel for defendant Nos.2 to 6-appellants would contend that both the Courts have erred in passing the preliminary decree and that the suit of the plaintiff-respondent Nos.1 to 8 should have been dismissed. It is submitted that the suit was bad for partial partition inasmuch as the property falling in the Lal Lakir had not been included in the suit. It is further the contention of the learned counsel that there had been a mutual settlement between the parties and the same was duly proved on the record and hence the suit for partition ought to have been dismissed.
6. I have heard the learned counsel for the defendant Nos.2 to 6-appellants.

7. In the present case, as per the jamabandis produced on the record, the parties are shown to be owners of their respective shares. The argument of the learned counsel for the defendant Nos.2 to 6-appellants that the suit was bad for partial partition deserves to be rejected for the reason that this was not the stand taken by them in their written statement nor any issue was pressed regarding the said allegation. The learned counsel has also not been able to refer to the arguments, if any, raised by the counsel for the defendant Nos.2 to 6-appellants before both the Courts regarding the plea of partial partition. No such plea was even canvassed in the grounds of appeal filed before the First Appellate Court. In view thereof, the argument stands rejected. Further still, the writing Mark D1, which has been relied upon by the learned counsel for defendant Nos.2 to 6-appellants to contend that there was a mutual settlement, was not proved in accordance with law. The learned counsel for defendant Nos.2 to 6-appellants has not been able to show to this Court an iota of evidence on the record to even remotely suggest that there was another property which had been left out and had not been included in the present suit. No reliance can be placed on the document Mark D1 which has not been proved in accordance with law. No other point was argued.
8. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

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